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LETTER DATED 26 JULY 1996 FROM THE PERMANENT REPRESENTATIVES OF FRANCE, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE UNITED STATES OF AMERICA TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

We have the honour to transmit to you the attached letter addressed to Ambassador Zbigniew Wlosowicz, Chairman of the Security Council Committee established pursuant to resolution 748 (1992) concerning the Libyan Arab Jamahiriya, concerning measures to strengthen the impact of existing sanctions on Libya.

May we ask you for your kind assistance in circulating this statement as a document of the Security Council.

(Signed) Alain DEJAMMET
Permanent Representative of
France to the United Nations

(Signed) John WESTON
Permanent Representative of the
United Kingdom of Great Britain
and Northern Ireland to the
United Nations

(Signed) Madeleine K. ALBRIGHT
Permanent Representative of the United
States of America to the United Nations

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Annex

(Original: English and French)

Letter dated 19 July 1996 from the Permanent Representatives of France, the United Kingdom of Great Britain and Northern Ireland and the United States of America to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 748 (1992) concerning the Libyan Arab Jamahiriya

On the occasion of the review of Libyan sanctions on 21 March 1996, France, the United Kingdom and the United States said in a joint statement that they wished to "carry out an early and thorough review of the implementation of the provisions contained in those resolutions (i.e., United Nations Security Council resolutions 731, 748 and 883) with a view to identifying measures to strengthen the impact of existing sanctions on Libya through their full and rigorous application. They intend to report to the Sanctions Committee the conclusions of these consultations where they fall within the framework of the sanctions agreed by the Security Council."

France, the United Kingdom and the United States wish to convey to the Security Council Committee established pursuant to resolution 748 (1992) concerning the Libyan Arab Jamahiriya the results of the consultations between the three Governments regarding enforcement of sanctions against Libya.

Inquiries by the three Governments have revealed that in certain cities the number of diplomats stationed at Libyan diplomatic missions has increased since 1993, in violation of resolutions 748 (1992) and 883 (1993). These cities include: Bamako; Bangui; Beijing; Beirut; N'Djamena; and Sana'a. Our inquiries also concluded that in certain cities, including Amman and Cairo, offices of Libyan Arab Airlines (LAA) remain open and staffed, in contravention of paragraph 6 (b) of resolution 748 (1992), which states that "United Nations Member States shall prevent the operation of all Libyan airline offices", and paragraph 6 (a) of United Nations Security Council resolution 883 (1993), which requires "the immediate and complete closure of all Libyan airline offices within their (Member States') territories". There is no justification for such offices to remain open. The Governments of France, the United Kingdom and the United States have verified these facts with their Embassies and United Nations Permanent Missions and are providing this information to the Committee in the hope that the Member States involved will take the appropriate action to implement resolution 748 (1992).

According to information furnished by the Secretariat, there are still a large number of countries that have not responded to paragraph 9 (b) of United Nations Security Council resolution 748 (1992) by informing the Secretary-General of measures they have taken to comply with the resolution, and a larger number who have not responded to the similar order in paragraph 13 of resolution 883 (1993). The three Governments suggest that these Member States should be given until the end of August to comply with their obligations. After this

point, the Sanctions Committee will be requested to send letters reminding those who have not complied, urging them to do so.

A number of Governments have observed that there is a need for a mechanism whereby companies with legitimate operations in Libya may transfer funds into Libya to pay the expenses of such businesses, subject to the stipulations of paragraphs 3 and 4 of resolution 883 (1993) and with appropriate monitoring by national sanctions enforcement agencies. The Governments of France, the United Kingdom and the United States wish to recommend that the Sanctions Committee approve such a mechanism to ensure faithful compliance by all States with resolution 883 (1993) and provide appropriate guidance. The three Governments also recommend that the Committee should further assist States in their efforts to implement rigorously the mandatory sanctions against Libya through the issuance of guidance on the payment of post-zero debts in Member States, payments made following calls on guarantees (performance bonds) relating to contracts with Libyan buyers, and on reinsurance. Suggested guidance on these matters is attached.

Finally, the three Governments wish to remind Member States that they have an obligation to take practical action under paragraph 6 (c) of Security Council resolution 748 (1992) which requires States to "take all appropriate steps to deny entry to or expel Libyan nationals who have been denied entry to or expelled from other States because of their involvement in terrorist activities", making it difficult for such persons to travel internationally.

(Signed) Alain DEJAMMET
Permanent Representative of
France to the United Nations

(Signed) John WESTON
Permanent Representative of the
United Kingdom of Great Britain
and Northern Ireland to the
United Nations

(Signed) Madeleine K. ALBRIGHT
Permanent Representative of the United
States of America to the United Nations

Enclosure

Draft Statement on Legitimate Business Operations in Libya, Payment of Post-zero Debts, Reinsurance and Bonds

The Sanctions Committee notes that the enforcement of sanctions is the responsibility of the national enforcement authorities of Member States.

1. Payment to fund legitimate business operations in Libya:

1.1. The Sanctions Committee notes that movements of funds through frozen accounts are permitted to transfer monies to Libya to fund legitimate business operations in Libya by non-Libyan entities, as long as these movements are made in accordance with the stipulations of paragraphs 3 and 4 of United Nations Security Council resolution 883 (1993).

1.2. Such funds would be credited to a frozen account in the Member States in the first instance. When presented with evidence that the corresponding amount has been credited to the beneficiary's account and was available to fund non-Libyan entities' legitimate activities in Libya, national enforcement authorities would give permission for the funds credited in the frozen account to be released for any legitimate payment in a Member State.

2. Payment of post-zero debts:

2.1. Any mechanism deemed appropriate and practical by national enforcement authorities to facilitate the payment of Libyan debts arising after 1 December 1993 (e.g. housekeeping expenses and taxes) payable in Member States must be in accordance with the stipulations of paragraphs 3 and 4 of United Nations Security Council resolution 883 (1993).

2.2. Such payments in Member States should be made from funds in free accounts. The availability of the proceeds of sales of oil and agricultural products since 1 December 1993 in such accounts means that there is no need for special application to national enforcement authorities in order to make payments from frozen accounts.

3. Reinsurance:

3.1. The Committee notes that reinsurance of Libyan risk is not prohibited by United Nations Security Council resolution 883 (1993). Transactions related to reinsurance business must be in accordance with the stipulations of paragraphs 3 and 4 of resolution 883 (1993).

3.2. The following guidance will ensure strict controls on funds between LIC and the reinsurance sector:

- All those involved in the reinsurance business must ensure that money received from the Libyan Insurance Company (LIC) in respect of premiums or any other payment is from funds specified in paragraph 4 of resolution 883 (1993);

- Premiums must be received from LIC before any payments are made in the internal market (e.g. brokers must have the sum from LIC in hand before making premium payments to underwriters). This prevents funding on behalf of LIC;

- Any payment of claim arising from reinsurance, to be made to or on behalf of a Libyan undertaking (as defined in paragraph 3 (b) of resolution 883 (1993)) must be paid into an account which is blocked for the duration of the sanctions;

- In a certain class of reinsurance business, the proportional treaties, LIC may in the normal course of the treaty regularly present single transactions for settlement which represent the net balance of the business in the given period. This is inherent in the basis of the treaty and is considered permissible;

- Any offset by the broker or reinsurer between premiums and claims is not permissible nor is the rollover into the next period of balances outstanding in the current period.

3.3. By maintaining a strict separation of the funds payable by LIC (from external funds) and the payment of any claims due to LIC (into blocked account), the service of reinsurance may properly be supplied in accordance with resolution 883 (1993).

4. Bonds:

4.1. The Sanctions Committee notes that in the case of most bonds and guarantees such as tender bonds and performance bonds, any payment due to Libya as a result of a call should be made only to a blocked account. However, there is one exception: if States are satisfied that a payment under a contract with a Libyan buyer was paid from funds derived from the sale of petroleum in accordance with the provisions of paragraph 4 of resolution 883 (1993), then any call on a guarantee relating to this contract may be met by payment to the account from which the initial payment was made as long as either no work has been done on the contract or the amount of the call excludes the value of any work that has been done, and in any event the amount in question is no greater than the amount of the payment already made.